IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1250 OF 1987
To
FIRST APPEAL NO. 1254 OF 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
HARSHIDABEN W/O. SONI MAHENDRAKUMAR JAICHANDBHAI & ORS. - Respondent(s)

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Appearance :
Ms. Maya Desai for Appellant(s).
Shri Premal S. Raj for Respondent(s) : 1 - 6.
None for Respondent(s) : 7, 8 & 9.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/07/2007

COMMON ORAL JUDGMENT

Office Report shows that respondent No.9-driver is not served. Ms. Maya Desai, learned Counsel for the appellant, however, submits that irrespective of non-service of the driver, she be allowed to proceed with the matter and the Court may direct deletion of the name of the unserved respondent. It is, accordingly, ordered. Office to make necessary corrections within ten days.

2. These five appeals have been filed by the Gujarat State Road Transport Corporation against various awards passed by the learned Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar in different cases.

3. At the inception, Ms. Desai, learned Counsel for the appellant, submitted that she is not challenging the quantum of compensation awarded in favour of the claimants, but, she is challenging the liability of the driver and consequent liability of the owner of the vehicle. After taking me through the evidence, specially, *panchnama* and the findings recorded by the learned Court below, she submitted that perusal of the *panchnama* would show that the jeep driver was rash and negligent, was driving on the wrong side of the road and after losing the balance, not only crossed the road, but, went in a pit. She submitted that the *panchnama* of the spot and the opinion of the *panch* would conclude the issue and would disentitle the claimants to make any claim against

the driver or owner of the bus.

4. Shri Premal S. Raj, learned Counsel for the respondents-claimants, on the other hand, submitted that the learned Court below has given cogent reasons for not relying upon the opinion of the panch witnesses. He also submitted that the learned Court below was justified in holding the driver of the bus negligent.

5. The *panchnama* on which both the parties are placing reliance is in two parts. The first part refers to the spot position, while the other part refers to the opinion of the panch witness. So far as the opinion of the panch witness is concerned, the same would not be admissible because it is opinion evidence. Such opinion cannot straightway be made admissible unless the person, who had given the opinion, is examined in the Court and he gives reasons to support the opinion and appropriate opportunity is given to the other side to challenge the correctness of the opinion.

In the opinion of this Court, the argument that the opinion of the panch witness was to be accepted is an argument which is contrary to law. The first part of the *panchnama* would show that the right sides of both the vehicles had dashed, the right side headlights of both the vehicles had broken. Once it is held that right side of the

vehicles had dashed, then, either both the vehicles are in the middle of the road or one of the vehicles had crossed the centre of the road and had hit the other vehicle. If the jeep driver had gone on the wrong side, then, right sides of the vehicles could not dash with each other, but, the left sides of the vehicles would have dashed. Under the circumstances, I must hold that the driver did not go to the wrong side, nor was driving with rashness and negligence.

6. Ms. Desai submitted that from the *panchnama*, it would appear that the driver had crossed the entire right side of the road and thereafter, the vehicle went in the pit, which would show that the driver was rash and negligent. In the opinion of this Court, once a heavy vehicle hits with a smaller vehicle and the driver of the smaller vehicle suffers injuries, then, obviously he is likely to, rather certainly would lose the control over the vehicle. The argument could assume some importance if the vehicle was hit from the left side and thereafter, it had gone to the right. In the present matter, the jeep was hit on the right side and thereafter, it had crossed the entire length of the bus and then, went to the right which would simply mean that after the accident, the driver lost control over the bus and the jeep went in the pit.

7. The Court below certainly was justified in holding the driver guilty of rashness and negligence.

8. I find no reason to interfere in the matters. Each of the appeals is dismissed with no order as to costs. Interim relief, if any, is vacated.

[R.S.Garg, J.]

*kamlesh**